

Exhibit A

**NOTICE CONCERNING MEDIATION OF ACTIONS PENDING
BEFORE THE COURT OF COMMON PLEAS OF SCHUYLKILL
COUNTY**

The Judges of the Court of Common Pleas of Schuylkill County believe that mediation of lawsuits is a very important component of dispute resolution. Virtually all lawsuits can benefit in some manner from mediation.

The Court has adopted Schuylkill County Local Rule 1001 to encourage the use of mediation. This early alert enables litigants to determine the best time during the life of their lawsuit for a mediation session. The intent of this early alert is to help the parties act upon the requirement to consider good faith mediation at the optimal time.

The Schuylkill County Bar Association provides mediation services and can be reached at (570) 628-1235. *Free mediation sessions for pro bono cases referred by MidPenn Legal Services are available through the Schuylkill County Bar Association.*

IN THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD AND LAURA
BALDWIN,
113 Albert Blvd.,
Pottsville, PA 17901

Plaintiffs,

vs.

MONTEREY FINANCIAL
SERVICES, INC.,
4095 Avenida De La Planta
Oceanside, CA 92056

Defendant.

No: S-1864-2014

(JURY TRIAL DEMANDED)

2014 NOV 24 A 11:47

SCHUYLKILL CITY PA
17901

PROTHONOTARY'S
OFFICE

COMPLAINT

RICHARD AND LAURA BALDWIN ("Plaintiffs"), by and through their attorneys,
KIMMEL & SILVERMAN, P.C., allege the following against MONTEREY FINANCIAL
SERVICES, INC. ("Defendant"):

INTRODUCTION

1. Plaintiffs' Complaint is based on the Telephone Consumer Protection Act, 47
U.S.C. § 227 *et seq.*; Pennsylvania Fair Credit Extension and Uniformity Act (hereinafter the
"PaFCEUA"), 73 Pa.C.S.A. § 2270 *et seq.*; the Pennsylvania Unfair Trade Practices and
Consumer Protection Law (hereinafter the "PaUTCPL"), 73 P.S. § 201-1 *et seq.*; and the
Pennsylvania Common Law Tort of Invasion of Privacy.

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant 42 Pa. Cons. Stat. § 931(a).

1 "leisure lifestyle and travel benefits." See <http://www.prestigesoftwareinc.com/about>.

2 15. As Plaintiffs do not owe any business debt, any debt that Defendant was
3 attempting to collect could only be personal in nature.

4 16. Plaintiffs dispute owing the alleged debt, as they cancelled the contract with
5 Prestige.

6 17. Beginning in October 2013, and continuing through March 2014, Defendant
7 repeatedly and continuously called Plaintiffs on their home and cellular telephones in an attempt
8 to collect an alleged consumer debt.

9 18. The cellular telephone number has been assigned to a cellular telephone service
10 for which Plaintiffs incur a charge for incoming calls.

11 19. Defendant contacted Plaintiffs on their home and cellular telephones one (1) to
12 two (2) times a day, multiple times a week during the relevant time period.

13 20. For example, Defendant called Plaintiffs' home telephone on the following dates
14 and times: October 18, 2013, at 1:45 p.m.; October 21, 2013, at 7:08 p.m.; October 31, 2013, at
15 11:25 a.m.; November 7, 2013, at 5:14 p.m.; November 13, 2013, at 7:40 p.m. and 8:30 p.m.;
16 November 20, 2013, at 2:24 p.m. and 8:25 p.m.; November 21, 2013, at 6:51 p.m.; December 5,
17 2013, at 3:24 p.m.; December 9, 2013, at 1:20 p.m.; December 12, 2013, at 1:51 p.m.; December
18 23, 2013, at 12:09 p.m.; January 9, 2014, at 6:22 p.m.; January 18, 2014, at 11:24 p.m.; January
19 20, 2014, at 12:29 p.m.; January 31, 2014, at 5:28 p.m.; February 6, 2014, at 7:10 p.m.; February
20 12, 2014, at 6:06 p.m.; February 13, 2014, at 5:45 p.m.; February 21, 2014, at 7:18 p.m.;
21 February 24, 2014, at 2:54 p.m.; February 28, 2014, at 5:34 p.m.; March 5, 2014, at 7:19 p.m.;
22 March 6, 2014, at 5:59 p.m.; March 12, 2014, at 7:57 p.m.; March 13, 2014, at 6:51 p.m.; March
23 20, 2014, at 1:33 p.m.; March 21, 2014, at 11:22 a.m.; March 26, 2014, at 6:28 p.m.; March 27,

1 2014, at 5:58 p.m.; and April 1, 2014, at 3:21 p.m.

2 21. Additionally, by way of example, Defendant called Plaintiffs' cellular telephone
3 on: November 13, 2013, at 7:42 p.m.; November 20, 2013, at 8:25 p.m.; November 21, 2013, at
4 6:52 p.m.; December 5, 2013, at 3:25 p.m.; December 9, 2013, at 1:22 p.m.; December 12,
5 2013, at 1:52 p.m.; January 9, 2014, at 6:23 p.m.; January 18, 2014, at 11:25 a.m.; January 31,
6 2014, at 5:29 p.m.; February 6, 2014, at 7:10 p.m.; February 12, 2014, at 6:06 p.m.; February 13,
7 2014, at 5:45 p.m.; February 21, 2014, at 7:18 p.m.; February 28, 2014, at 5:34 p.m.; March 5,
8 2014, at 7:19 p.m.; March 6, 2014, at 5:59 p.m.; March 12, 2014, at 7:56 p.m.; March 13, 2014,
9 at 6:51 p.m.; March 20, 2014, at 5:15 p.m.; March 21, 2014, at 5:06 p.m.; March 26, 2014, at
10 6:28 p.m.; March 27, 2014, at 5:58 p.m.; and April 1, 2014, at 4:04 p.m.

12 22. Often, Plaintiffs would answer Defendant's calls, and Defendant would
13 disconnect the call.

14 23. For example, on October 23, 2013, at 11:25 a.m.; November 7, 2013, at 5:14
15 p.m.; November 13, 2013, at 7:40 p.m.; November 20, 2013, at 8:25 p.m., on both home
16 telephone and cellular telephone simultaneously; December 12, 2013, at 1:51 p.m.; January 9,
17 2014, at 6:22 p.m.; January 18, 2014, at 11:24 a.m.; January 31, 2014, at 5:28 p.m.; March 5,
18 2014, at 7:19 p.m.; March 13, 2014, at 6:51 p.m.; March 20, 2014, at 1:33 p.m.; and April 1,
19 2014, at 3:21 p.m., when Plaintiffs answered Defendant's calls, it hung up on them.

20 24. It was annoying and aggravating to Plaintiffs to receive collection calls from a
21 company that would hang up on them when they answered the calls.

22 25. When contacting Plaintiffs on their cellular telephone, Defendant used an
23 automatic telephone dialing system and/or automatic and/or pre-recorded messages.

24 26. Defendant's telephone calls were not made for "emergency purposes."
25

1 27. Plaintiffs dispute having ever provided Defendant consent to call their cellular
2 telephone number.

3 28. Defendant never obtained Plaintiffs consent to call their cellular telephone.

4 29. Nevertheless, Plaintiffs revoked consent to call their cellular telephone, when
5 they cancelled their contract with Prestige.

6 30. Therefore, when Defendant contacted Plaintiffs on their cellular telephone, they
7 did so without their consent.

8 31. Further, Plaintiffs never consented to Defendant's calls to their home telephone.

9 32. In addition to calling Plaintiffs, Defendant also contacted two of Plaintiffs'
10 friends in its attempts to collect a debt.

11 33. Specifically, in November 2013, Defendant called Plaintiffs' two friends and left
12 messages on their answering machine stating that it was calling for "Richard and Laura
13 Baldwin," that it was trying to contact them "in regards to a debt," and to please return as it was
14 "urgent."

15 34. It was upsetting and embarrassing for Plaintiffs to have Defendant disclose that
16 they owed a debt to their friends.

17 35. Defendant did not have Plaintiffs express permission to disclose information
18 about the debt to third parties, including Plaintiffs' friends.

19 36. Then, again, in March 2014, Defendant called Plaintiffs' friend and left a
20 message on her answering machine that it was calling to collect a debt from "Richard and Laura
21 Baldwin."

22 37. When calling Plaintiffs' friend in March 2014, Defendant did not have Plaintiffs'
23 express consent to disclose debt information to her.

1 38. Also, in its attempts to collect the alleged debt, Defendant sent Plaintiffs emails
2 seeking and demanding payment of the disputed debt.

3 39. Specifically, on October 21, 2013, Defendant sent Plaintiffs an email demanding
4 payment of \$266.77.

5 40. Then, on November 12, 2013, Defendant sent Plaintiffs an email demanding
6 payment of \$273.28.

7 41. However, on November 25, 2013, Defendant sent Plaintiffs an email demanding
8 payment of \$403.41 or threatening to "declare the unpaid balance due immediately and/or
9 placement of [their] account with a collection agency."

10 42. Defendant did not explain to Plaintiffs how the amount increased almost \$200.00
11 in thirteen (13) days and it did not identify the amount of interest and/or collection fees.

12 43. Also, Defendant's claim to place Plaintiffs' account with a collection was false
13 and deceptive, as the account had already been placed with a collection agency - Defendant.

14 44. Further, in its October 21, 2013; November 12, 2013; and November 25, 2013,
15 emails, Defendant claimed that the "The State Rosenthal Fair Debt Collection Practices Act and
16 the federal Fair Debt Collection Practices Act require that, except under unusual circumstances,
17 collectors may not contact you before 8:00 a.m. or after 9:00 p.m."

18 45. This is a false representation of the Fair Debt Collection Practices Act, as the Act
19 specifically states that calling before 8:00 a.m. and after 9:00 p.m. is an inconvenient time to call
20 a consumer.
21

22 46. In addition, Defendant reported this disputed debt to the credit reporting bureaus.

23 47. By reporting this debt on Plaintiffs' credit reports, adversely affected their credit
24 rating.
25

1 48. Specifically, Plaintiff Laura Baldwin applied to have her credit limit increased on
2 a credit card in order to make needed repairs to their home.

3 49. However, the credit card company denied her request to have her credit limit
4 increased because her credit report showed a collection action.

5 50. Finally, desiring to stop Defendant's collection actions, Plaintiffs retained
6 counsel.

7 51. On March 27, 2014, the undersigned sent written correspondence to Defendant
8 advising that his firm represented Plaintiffs and to cease all communications with Plaintiffs.
9

10 52. Defendant received the letter of representation on March 31, 2014, at 9:45 a.m.

11 53. Despite knowing that Plaintiffs were represented by counsel and that they did not
12 want to be contacted, on April 1, 2014, at 3:21 p.m., Defendant called Plaintiffs' home
13 telephone, and at 4:04 p.m., Defendant called Plaintiffs' cellular telephone.

14 54. Defendant's actions herein were taken with the intent to annoy, abuse, harass,
15 deceive, and mislead Plaintiffs, as well as to act in an unfair and unconscionable manner.

16 **DEFENDANT VIOLATED THE**
17 **TELEPHONE CONSUMER PROTECTION ACT**

18 **COUNT I**

19 55. Plaintiffs incorporate the forgoing paragraphs as though the same were set forth at
20 length herein.

21 56. Defendant initiated multiple automated telephone calls to Plaintiffs' cellular
22 telephone using an automated and/or prerecorded voice and/or automatic telephone dialing
23 system.

24 57. Defendant's calls to Plaintiffs were not made for emergency purposes.
25

1 58. Defendant's calls to Plaintiff were not made with Plaintiffs prior express consent
2 and/or were made after Plaintiffs' consent was revoked.

3 59. Defendant's acts as described above were done with malicious, intentional,
4 willful, reckless, wanton and negligent disregard for Plaintiffs' rights under the law and with the
5 purpose of coercing Plaintiffs into paying the debt.

6 60. The acts and/or omissions of Defendant were done unfairly, unlawfully,
7 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense,
8 legal justification or legal excuse.

9 61. As a result of the above violations of the TCPA, Plaintiffs have suffered the losses
10 and damages as set forth above entitling Plaintiffs to an award of statutory, actual and trebles
11 damages.
12

13 **DEFENDANT VIOLATED THE**
14 **PENNSYLVANIA FAIR CREDIT EXTENSION UNIFORMITY ACT**

15 **COUNT II**

16 62. Plaintiffs hereby incorporate all facts and allegations specified in all preceding
17 paragraphs by reference as if fully set forth at length.

18 63. At all relevant times, Defendant was attempting to collect a "debt" as that term is
19 defined by 73 P.S. § 2270.3.

20 64. Defendant's conduct, outlined above, violated 73 P.S. § 2270.4(b)(1)(ii) by
21 communicating with any person other than the consumer and stating that such consumer owes a
22 debt.

23 65. Defendant's conduct, outlined above, violated 73 P.S. § 2270.4(b)(2)(ii) by
24 communicating with Plaintiffs knowing that they were represented by an attorney.
25

1 66. Defendant's conduct, outlined above, violated 73 P.S. §§ 2270.4(b)(4) and
2 2270.4(b)(4)(v) as it had the natural consequences of harassing Plaintiffs and it caused Plaintiffs'
3 telephone to ring repeatedly and continuously, as well as calling Plaintiffs and hanging up when
4 they answered, with the intent to annoy, abuse and harass them.

5 67. Defendant's conduct, outlined above, violated 73 P.S. §§ 2270.4(b)(5),
6 2270.4(b)(5)(ii), and 2270.4(b)(5)(x) as it attempted to collect an amount not owed by Plaintiffs
7 and made false statements in their communications with Plaintiffs.

8 68. Defendant's conduct, outlined above, violated 73 P.S. §§ 2270.4(b)(6) and
9 2270.4(b)(6)(i) as it attempted to collect an amount not authorized by the agreement creating the
10 alleged debt and/or authorized by law, failing to update its records to restrict calls to Plaintiffs'
11 home and cellular telephones, and calling Plaintiffs' friends and neighbors about the alleged
12 debt.
13

14 **DEFENDANT INVADED PLAINTIFFS' PRIVACY BY INTRUDING UPON THEIR**
15 **SECLUSION**

16 **COUNT III**

17 69. Plaintiffs hereby incorporate all facts and allegations specified in all preceding
18 paragraphs, by reference as if fully set forth at length.

19 70. By repeatedly calling Plaintiffs, intentionally harassing Plaintiffs, and calling
20 third parties and disclosing that Plaintiffs owed a debt; Defendant intentionally intruded upon the
21 solitude or seclusion of Plaintiffs' private affairs.

22 71. Defendant's intrusion was highly offensive to a reasonable person.

23 72. Defendant's intrusion was intentional or committed with reckless disregard to
24 Plaintiffs' rights.
25

1 73. Defendant's intrusion would cause mental suffering, shame or humiliation to any
2 person of ordinary sensibilities.

3 74. Plaintiffs did in fact take serious offense to Defendant's intrusion into their
4 solitude, resulting in extreme annoyance, embarrassment, shame and humiliation.

5 75. Plaintiffs have suffered and continue to suffer damages as a direct and proximate
6 result of Defendant's unlawful conduct complained of herein.

7 WHEREFORE, Plaintiffs, RICHARD AND LAURA BALDWIN, respectfully pray for a
8 judgment as follows:
9

- 10 a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A); 73 Pa.
11 Stat. § 201-9.2(a); and Pennsylvania common law;
- 12 b. Statutory damages of \$500.00 per violative telephone call pursuant to 47
13 U.S.C. § 227(b)(3)(B);
- 14 c. Treble damages of \$1,500 per violative telephone call pursuant to 47
15 U.S.C. § 227(b)(3);
- 16 d. Statutory damages pursuant to 73 Pa. Stat. § 201-9.2(a);
- 17 e. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- 18 f. All reasonable attorneys' fees, witness fees, court costs and other litigation
19 costs incurred by Plaintiffs pursuant to 73 Pa. Stat. § 201-9.2(a);
- 20 g. Punitive damages for Defendant's invasion of Plaintiffs' privacy; and
- 21 h. Any other relief deemed appropriate by this Honorable Court.
22
23
24
25

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiffs, RICHARD AND LAURA BALDWIN,
demand a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: November 21, 2014

By: 
CRAIG THOR KIMMEL
Attorney ID No. 57100
Tara L. Patterson
Attorney ID No. 88343
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VERIFICATION

I, RICHARD BALDWIN, Plaintiff in the above-captioned matter; that I am acquainted with the facts set forth in the foregoing Complaint; that same are true and correct to the best of my knowledge, information, and belief; and that this statement is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities.


RICHARD BALDWIN

VERIFICATION

I, LAURA BALDWIN, Plaintiff in the above-captioned matter; that I am acquainted with the facts set forth in the foregoing Complaint; that same are true and correct to the best of my knowledge, information, and belief; and that this statement is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities.


LAURA BALDWIN